IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 34746 of 2007()

OS.239/2007 of PRINCIPAL SUB COURT,ALAPPUZHA

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PETITIONER:

1. ASHRAF @ ACHAPPA, ILLICKAL,
   VATTAYAL WARD, ALAPPUZHA.

2. RAFFIA UMMA @ THATHA OF -DO-

3. KUNJUMON, ILLICKAL OF -DO-

4. T.R.BABU, CHITHIRAYIL,
   KUTHIRAPANTHI WARD, ALAPPUZHA.

5. FAISAL @ MANJA, ILLICKAL PURAYIDOM,
   VATTAYAL WARD, ALAPPUZHA.

BY ADV. SRI.R.AZAD BABU

RESPONDENTS:

KAMAL, SON OF MAKKAR,
ULLADANKUNNEL, THURAVOOR P.O.,
KUTHIYATHODU, CHERTHALA, ALAPPUZHA.

BY ADV. SRI.C.A.CHACKO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) IN 34746/07

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.216/07 OF SUB COURT, ALAPPUZHA

EXT.P2: -DO- OF THE WRITTEN STATEMENT FILED IN O.S.216/07

EXT.P3: -DO- OF THE PLAINT IN O.S.239/07 OF SUB COURT, ALAPPUZHA

EXT.P4: -DO- OF THE PETITION FILED UNDER SECTION 10 OF CPC

EXT.P5: -DO- OF THE OBJECTIONS FILED TO SECTION 10 PETITION VIDE EXT. P4

EXT.P6: -DO- OF THE ORDER DT. 7.11.2007 OF THE SUB COURT, ALAPPUZHA

jj /TRUE COPY/

P.A. TO JUDGE

M.N. KRISHNAN, J.

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W.P.C. NO. 34746 OF 2007

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Dated this the 11th day of December, 2007.

J U D G M E N T

This writ petition is filed against the order of the Principal Subordinate Judge, Alappuzha whereby he had dismissed the application filed under Section 10 of CPC to stay O.S.239/07 pending before that Court. O.S.239/07 is filed by the respondent for recovery of possession on the strength of title. The brief facts necessary for the disposal of the writ petition as follows. It is the case of the plaintiff in O.S.216/07 that the first defendant in that suit had entered into an agreement to sell the property in favour of the plaintiff and in pursuance of the same had put the plaintiff in possession of the property and therefore the plaintiff therein is in possession of the property and he has filed the suit for a decree for specific performance of the contract. The contention of the plaintiff in O.S.239/07 is to the effect that he had purchased the property for valuable consideration

from the first defendant in O.S.216/07 and by an act of trespass the defendant in O.S.239/07 had come into possession of the property and therefore he prays for recovery of possession on the strength of title. Now, the whole question depends upon the decision whether there has been an agreement entered into between the plaintiff and the first defendant in O.S.216/07 and whether he has put in possession on the strength of the agreement and further whether he is entitled to a decree for specific performance of the contract. It may also incidentally arise in that case whether the plaintiff in O.S.239/07 is a bonafide purchaser for valuable consideration and whether the purchaser is entitled to any relief and whether the Court has to exercise the discretionary jurisdiction of granting a decree for specific performance of the contract. So, equally it is important to

find out that in the other case whether the contention raised by the plaintiff in O.S.239/07 is true and correct and whether he is entitled to the recovery as prayed for. These matters can be decided only in one adjudicatory process otherwise there is every possibility of conflict of decisions which may virtually result in a non-executable decree being passed. Therefore, I feel this is a case where it is not desirable to stay the proceedings under Section 10 of CPC but to transfer one of the cases to the other Court for joint trial since it is informed that evidence has already commenced in O.S.239/07 and no cross-examination has been done. It is only just that O.S.216/07 pending before the Addl. Subordinate Judge, Alappuzha is withdrawn and made over to the Principal Subordinate Judge, Alappuzha where O.S.239/07 is pending. The Principal Subordinate Judge,

Alappuzha is directed to jointly try O.S.239/07 and O.S.216/07 and dispose of the matter in accordance with law. If any reopening of the evidence is necessary or further chances are to be given to the parties it may also be done by the Court and the Court may fix a date for further proceeding and then proceed with the matter in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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